

In the Court of Appeals of the State of Alaska

Kevin S. Patterson,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-13576**

Order

Date of Order: **September 2, 2020**

Trial Court Case No. **3KN-10-00057CR**

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

Kevin Scott Patterson was convicted of seven counts of possessing child pornography, and the trial court imposed a sentence of 17 years with 5 years suspended (12 years to serve). After this Court affirmed his convictions on appeal,¹ Patterson filed a motion to correct his sentence under Alaska Criminal Rule 35(a), alleging that his sentence was illegal. The trial court denied this motion, and Patterson filed an appeal of that decision in this Court.

Patterson then filed a motion in the trial court, seeking release on bail pending the resolution of the appeal of his Criminal Rule 35(a) motion. The trial court denied his request for release, and that denial is the subject of the present bail appeal.

We question whether Patterson is statutorily eligible for bail pending appeal. Although the statutory preclusion on bail pending appeal for a person convicted of a “sexual felony”² does not apply to Patterson because he committed his offenses in

¹ On appeal, Patterson challenged his convictions on multiple grounds but did not challenge his sentence. *See Patterson v. State*, 2017 WL 2392428 (Alaska App. May 31, 2017) (unpublished).

² AS 12.30.040(b)(2).

2009 (prior to the enactment of that preclusion in 2010),³ Patterson's direct appeal of his convictions is final. That is, Patterson's case is no longer awaiting sentencing or pending direct appeal, and he is seemingly no longer entitled to be released on bail.⁴

But even if Patterson is eligible for bail pending appeal, we conclude that the trial court did not abuse its discretion when it denied Patterson's request for release on bail.⁵

In the trial court, Patterson bore the burden of showing that his future appearance and the safety of the community could be reasonably assured.⁶ To meet this burden, Patterson proposed to post a \$10,000 appearance bond and to reside in Arizona with his elderly parents. He also proposed that, as conditions of his release, he would maintain contact with his attorneys, provide his contact information and residence address to the court, and maintain his required registration as a sex offender.

According to Patterson, the conditions of his incarceration both limit his ability to address his legal issues and jeopardize his health. He argued that his proposed release plan would alleviate these problems and also allow him to help take care of his aging parents.

³ SLA 2010, ch. 19, § 11; *see also* SLA 2010, ch. 19, § 31(c) (applying the new preclusion prospectively).

⁴ *Cf.* AS 12.30.040(c) ("A person who has been convicted of an offense and who has filed an application for post-conviction relief may not be released under this section until the court enters an order vacating all convictions against the person.").

⁵ *See* AS 12.30.030(a) (providing that an appellate court "shall affirm the [trial court's bail] order unless it finds that the lower court abused its discretion").

⁶ AS 12.30.040(a).

The trial court denied Patterson's request for release for the reasons set out in the State's opposition. The State contended that Patterson had failed to meet his burden of proving that, under his release plan, his future appearance and the safety of the public could be reasonably assured, and that Patterson's risk of re-offending was high.

In this case, Patterson was convicted of seven counts of possessing child pornography. The record shows that Patterson committed these offenses while he was on probation for possessing child pornography in a different state. In addition to these offenses, Patterson's criminal history includes several out-of-state convictions (for possession of indecent photographs of a minor, and child endangerment) and at least one Alaska conviction (for misdemeanor failure to register as a sexual offender).

Under these circumstances, even assuming Patterson is eligible for bail pending appeal, we conclude that the trial court did not abuse its discretion when it denied Patterson's release proposal.

We **AFFIRM** the trial court's denial of Patterson's request for release on bail.

Clerk of the Appellate Courts



Carly Williams, Deputy Clerk

cc: Court of Appeals Judges
Distribution:

Mail:
Patterson, Kevin S

Email:
Soderstrom, Donald